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January 23, 2024

Via ECF

The Honorable Paul A. Engelmayer
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *SEC v. SolarWinds Corp., et al.*, 23-cv-09518-PAE-BCM

Dear Judge Engelmayer:

Plaintiff Securities and Exchange Commission (“SEC”) and Defendants SolarWinds Corp. (“SolarWinds”) and Timothy G. Brown (collectively, “Defendants”) write to address the Court’s December 29, 2023 Order (ECF No. 39) requesting the parties to notify the Court “if and when they become aware of other entities affected or potentially affected by the Sunburst cyber-incident.”

The parties understand based on the initial status conference held on December 14, 2023 that the Court has asked for this information for purposes of assessing any conflicts that could affect its participation in this case. Respectfully, it is the parties’ position that identifying all entities “potentially affected by the Sunburst cyber-incident”—the outer bounds of which could be interpreted to include all of the up to 18,000 customers that SolarWinds identified in its Form 8-K filed on December 14, 2020 as potentially having had “an installation of the Orion products that contained this vulnerability”—is not necessary for purposes of assessing conflicts. Further, SolarWinds notes that providing information to the Court regarding all “affected or potentially affected” entities would be unduly burdensome (indeed, SolarWinds is not in a position to know precisely which of its customers were affected by the Sunburst cyber-incident) and could impinge on customer confidentiality requirements.

Here, the parties are not presently aware of any entities other than those (a) described in the Complaint, (b) identified in the SEC’s letter to the Court dated December 22, 2023, or (c) listed below, that will play any role in this litigation, and thus do not believe that identifying other entities affected or potentially affected by the Sunburst cyber-incident would be relevant to the Court’s assessment of its impartiality.

The SEC now believes that the five entities listed below may have discoverable information in this matter, and has also listed below several law firms which represent persons or entities that may have discoverable information in this matter. The SEC stresses that the

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inclusion of an entity or law firm on this list does not mean that the entity or law firm was affected by the Sunburst cyber-incident.

Entities that may have discoverable information:

- 1) JP Morgan
- 2) Evercore
- 3) Berenberg
- 4) JMP Securities
- 5) Credit Suisse

Law firms:

- 1) Skadden, Arps, Slate, Meagher & Flom LLP
- 2) Moss & Barnett, PA
- 3) Krieger Kim & Lewin LLP
- 4) Morrison Foerster
- 5) Haynes and Boone, LLP
- 6) Sidley Austin LLP
- 7) Choate Hall & Stewart LLP
- 8) Carr Maloney P.C.
- 9) Pillsbury Winthrop Shaw Pittman LLP
- 10) Spencer Fane
- 11) Thompson Coe, Cousins & Irons, LLP
- 12) Ropes & Gray LLP
- 13) Hach Rose Schirripa & Cheverie LLP

The parties propose that they continue to keep the Court apprised of any additional entities that may be called as a witness or are otherwise likely to be substantially involved in the litigation to the extent additional entities are identified through the discovery process. This is not to suggest, however, that the parties believe that an entity's involvement in the matter as a witness or a source of discoverable information would raise any question as to the Court's impartiality in this matter.

Respectfully submitted,

/s/ Christopher M. Bruckmann (with consent)¹

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¹ This electronic signature is used with consent in accordance with Rule 8.5(b) of the Court's ECF Rules and Instructions.

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